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In re Application of
SNELGROVE et al.
Application No.: 09/787,759
PCT No.: PCT/CA99/00873
Int. Filing Date: 24 September 1999
Priority Date: 25 September 1998
Attorney Docket No.: 13222.00039
For: TELECOMMUNICATION SERVICES

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: DECISION
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This decision is in response to applicants' "PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW NOTICE OF ABANDONMENT" filed 10 December 2002.

BACKGROUND

On 24 September 1999, applicants filed international application PCT/CA99/00873, which claimed a priority date of 25 September 1998. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 06 April 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 20 April 2000, prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 26 March 2001 (25 March 2001 being a Sunday).

On 22 March 2001, applicants filed a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 17 April 2001, the USPTO mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required. This Notification set a two-month extendable period for reply.

On 19 November 2002, the USPTO mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) indicating that the above-identified application was abandoned as to the United States of America for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 mailed 17 April 2001.

On 10 December 2002, applicants filed the instant "PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW NOTICE OF ABANDONMENT", which was accompanied by, *inter alia*, a statement of Richard P. Bauer and a copy of the docket records for the date on which the response was due (17 June 2001) showing all cases for the practitioner's law firm that had a response due on that date.

DISCUSSION

If applicants can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. II.

The showing required to establish nonreceipt of an Office communication is set forth in the notice entitled *Withdrawing the Holding of Abandonment When Office Actions Are Not Received*, 1156 O.G. 53 (Nov. 16, 1993). The showing must include: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received (the docket record must also be referenced in practitioner's statement).

As to (1), practitioner's statement that "[t]he PTO Notice of Missing Requirements purportedly mailed April 17, 2001, was not received" is construed as satisfying this requirement. If this interpretation is incorrect, practitioner must notify the Office of PCT Legal Affairs immediately.

As to (2), practitioner states that "after a personal search of the file jacket and docket records, I conclude that the Notice of Missing Requirements purportedly mailed April 17, 2001 was never received by Applicants' representatives" is construed as satisfying this requirement. If this interpretation is incorrect, practitioner must notify the Office of PCT Legal Affairs immediately.

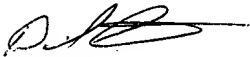
As to (3), applicants have provided a copy of the docket records for the date on which the response was due (17 June 2001) showing all cases for the practitioner's law firm that had a response due on that date. This docket record is also referenced in practitioner's statement. Accordingly, item (3) has been satisfied.

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is GRANTED.

For the reasons set forth above, the NOTIFICATION OF MISSING REQUIREMENTS mailed 17 April 2001 and the NOTIFICATION OF ABANDONMENT mailed 19 November 2002 are hereby VACATED.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision, including re-mailing the NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) requiring an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e).



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